

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 988

Introduced by Assembly Member Jones

February 22, 2013

An act to amend Sections 285, 286, 296, 331.1, 331.2, 426, 672, 3051, 11701, 11704.5, 11710, and 11723 of the Vehicle Code, relating to recreational off-highway vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 988, as amended, Jones. New Motor Vehicle Board: recreational off-highway vehicles.

Existing law establishes the New Motor Vehicle Board that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, as those terms are defined by the Vehicle Code. Existing law requires licensing by the Department of Motor Vehicles to do these activities for specified types of vehicles.

Existing law defines a recreational off-highway vehicle as a motor vehicle designed by the manufacturer for operation primarily off of the highway that has a steering wheel, nonstraddle seating, a maximum speed capability of greater than 30 miles an hour, and an engine displacement equal to or less than 1,000cc.

This bill would include the activities and practices of recreational off-highway vehicle dealers, manufacturers, manufacturer branches, distributors, distributor branches, or representatives within the scope of regulation by the board.

This bill would require these entities to make application to the Department of Motor Vehicles for a license, but would exempt them

from the written examination and education program requirements. The bill would require an applicant for a dealer's license for a dealer who deals exclusively in recreational off-highway vehicles to procure and file a bond with the department in the amount of \$10,000 before a license is issued or renewed. The bill would also require the holders of these licenses and the dealers, manufacturers, manufacturer branches, distributors, distributor branches, and representatives to pay fees for the issuance and renewal of a license.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 285 of the Vehicle Code is amended to
2 read:

3 285. "Dealer" is a person not otherwise expressly excluded by
4 Section 286 who:

5 (a) For commission, money, or other thing of value, sells,
6 exchanges, buys, or offers for sale, negotiates or attempts to
7 negotiate, a sale or exchange of an interest in, a vehicle subject to
8 registration, a motorcycle, snowmobile, all-terrain vehicle, or
9 recreational off-highway vehicle subject to identification under
10 this code, or a trailer subject to identification pursuant to Section
11 5014.1, or induces or attempts to induce any person to buy or
12 exchange an interest in a vehicle and, who receives or expects to
13 receive a commission, money, brokerage fees, profit, or any other
14 thing of value, from either the seller or purchaser of the vehicle.

15 (b) Is engaged wholly or in part in the business of selling
16 vehicles or buying or taking in trade, vehicles for the purpose of
17 resale, selling, or offering for sale, or consigned to be sold, or
18 otherwise dealing in vehicles, whether or not the vehicles are
19 owned by the person.

20 SEC. 2. Section 286 of the Vehicle Code is amended to read:

21 286. The term "dealer" does not include any of the following:

22 (a) Insurance companies, banks, finance companies, public
23 officials, or any other person coming into possession of vehicles
24 in the regular course of business, who sells vehicles under a
25 contractual right or obligation, in performance of an official duty,
26 or in authority of any court of law, if the sale is for the purpose of
27 saving the seller from loss or pursuant to the authority of a court.

1 (b) Persons who sell or distribute vehicles of a type subject to
2 registration or trailers subject to identification pursuant to Section
3 5014.1 for a manufacturer to vehicle dealers licensed under this
4 code, or who are employed by manufacturers or distributors to
5 promote the sale of vehicles dealt in by those manufacturers or
6 distributors. However, any of those persons who also sell vehicles
7 at retail are vehicle dealers and are subject to this code.

8 (c) Persons regularly employed as salespersons by vehicle
9 dealers licensed under this code while acting within the scope of
10 that employment.

11 (d) Persons engaged exclusively in the bona fide business of
12 exporting vehicles or of soliciting orders for the sale and delivery
13 of vehicles outside the territorial limits of the United States, if no
14 federal excise tax is legally payable or refundable on any of the
15 transactions. Persons not engaged exclusively in the bona fide
16 business of exporting vehicles, but who are engaged in the business
17 of soliciting orders for the sale and delivery of vehicles, outside
18 the territorial limits of the United States are exempt from licensure
19 as dealers only if their sales of vehicles produce less than 10
20 percent of their total gross revenue from all business transacted.

21 (e) Persons not engaged in the purchase or sale of vehicles as
22 a business, who dispose of any vehicle acquired and used in good
23 faith, for their own personal use, or for use in their business, and
24 not for the purpose of avoiding the provisions of this code.

25 (f) Persons who are engaged in the purchase, sale, or exchange
26 of vehicles, other than motorcycles, all-terrain vehicles, recreational
27 off-highway vehicles, or trailers subject to identification under
28 this code, that are not intended for use on the highways.

29 (g) Persons temporarily retained as auctioneers solely for the
30 purpose of disposing of vehicle stock inventories by means of
31 public auction on behalf of the owners at the owners' place of
32 business, or as otherwise approved by the department, if
33 intermediate physical possession or control of, or an ownership
34 interest in, the inventory is not conveyed to the persons so retained.

35 (h) Persons who are engaged exclusively in the business of
36 purchasing, selling, servicing, or exchanging racing vehicles, parts
37 for racing vehicles, and trailers designed and intended by the
38 manufacturer to be used exclusively for carrying racing vehicles.
39 For purposes of this subdivision, "racing vehicle" means a motor
40 vehicle of a type used exclusively in a contest of speed or in a

1 competitive trial of speed which is not intended for use on the
2 highways.

3 (i) A person who is a lessor.

4 (j) A person who is a renter.

5 (k) A salvage pool.

6 (l) A yacht broker who is subject to the Yacht and Ship Brokers
7 Act (Article 2 (commencing with Section 700) of Chapter 5 of
8 Division 3 of the Harbors and Navigation Code) and who sells
9 used boat trailers in conjunction with the sale of a vessel.

10 (m) A licensed automobile dismantler who sells vehicles that
11 have been reported for dismantling as provided in Section 11520.

12 (n) The Director of Corrections when selling vehicles pursuant
13 to Section 2813.5 of the Penal Code.

14 (o) (1) Any public or private nonprofit charitable, religious, or
15 educational institution or organization that sells vehicles if all of
16 the following conditions are met:

17 (A) The institution or organization qualifies for state tax-exempt
18 status under Section 23701d of the Revenue and Taxation Code,
19 and tax-exempt status under Section 501(c)(3) of the federal
20 Internal Revenue Code.

21 (B) The vehicles sold were donated to the nonprofit charitable,
22 religious, or educational institution or organization.

23 (C) The vehicles subject to retail sale meet all of the applicable
24 equipment requirements of Division 12 (commencing with Section
25 24000) and are in compliance with emission control requirements
26 as evidenced by the issuance of a certificate pursuant to subdivision
27 (b) of Section 44015 of the Health and Safety Code. Under no
28 circumstances may any institution or organization transfer the
29 responsibility of obtaining a smog inspection certificate to the
30 buyer of the vehicle.

31 (D) The proceeds of the sale of the vehicles are retained by that
32 institution or organization for its charitable, religious, or
33 educational purposes.

34 (2) An institution or organization described in paragraph (1)
35 may sell vehicles on behalf of another institution or organization
36 under the following conditions:

37 (A) The nonselling institution or organization meets the
38 requirements of paragraph (1).

1 (B) The selling and nonselling institutions or organizations enter
2 into a signed, written agreement pursuant to subparagraph (A) of
3 paragraph (3) of subdivision (a) of Section 1660.

4 (C) The selling institution or organization transfers the proceeds
5 from the sale of each vehicle to the nonselling institution or
6 organization within 45 days of the sale. All net proceeds transferred
7 to the nonselling institution or organization shall clearly be
8 identifiable to the sale of a specific vehicle. The selling institution
9 or organization may retain a percentage of the proceeds from the
10 sale of a particular vehicle. However, any retained proceeds shall
11 be used by the selling institution or organization for its charitable,
12 religious, or educational purposes.

13 (D) At the time of transferring the proceeds, the selling
14 institution or organization shall provide to the nonselling institution
15 or organization, an itemized listing of the vehicles sold and the
16 amount for which each vehicle was sold.

17 (E) In the event the selling institution or organization cannot
18 complete a retail sale of a particular vehicle, or if the vehicle cannot
19 be transferred as a wholesale transaction to a dealer licensed under
20 this code, the vehicle shall be returned to the nonselling institution
21 or organization and the written agreement revised to reflect that
22 return. Under no circumstances may a selling institution or
23 organization transfer or donate the vehicle to a third party that is
24 excluded from the definition of a dealer under this section.

25 (3) An institution or organization described in this subdivision
26 shall retain all records required to be retained pursuant to Section
27 1660.

28 (p) A motor club, as defined in Section 12142 of the Insurance
29 Code, that does not arrange or negotiate individual motor vehicle
30 purchase transactions on behalf of its members but refers members
31 to a new motor vehicle dealer for the purchase of a new motor
32 vehicle and does not receive a fee from the dealer contingent upon
33 the sale of the vehicle.

34 SEC. 3. Section 296 of the Vehicle Code is amended to read:

35 296. A "distributor" is any person other than a manufacturer
36 who sells or distributes new vehicles subject to registration under
37 this code, new trailers subject to identification pursuant to Section
38 5014.1, or new off-highway motorcycles, all-terrain vehicles, or
39 recreational off-highway vehicles subject to identification under
40 this code, to dealers in this state and maintains representatives for

1 the purpose of contacting dealers or prospective dealers in this
2 state.

3 SEC. 4. Section 331.1 of the Vehicle Code is amended to read:

4 331.1. A “franchisee” is any person who, pursuant to a
5 franchise, receives new motor vehicles subject to registration under
6 this code, new off-highway motorcycles, as defined in Section
7 436, new all-terrain vehicles, as defined in Section 111, new
8 recreational off-highway vehicles, as defined in Section 500, or
9 new trailers subject to identification pursuant to Section 5014.1
10 from the franchisor and who offers for sale or lease, or sells or
11 leases the vehicles at retail or is granted the right to perform
12 authorized warranty repairs and service, or the right to perform
13 any combination of these activities.

14 SEC. 5. Section 331.2 of the Vehicle Code is amended to read:

15 331.2. A “franchisor” is any person who manufactures,
16 assembles, or distributes new motor vehicles subject to registration
17 under this code, new off-highway motorcycles, as defined in
18 Section 436, new all-terrain vehicles, as defined in Section 111,
19 new recreational off-highway vehicles, as defined in Section 500,
20 or new trailers subject to identification pursuant to Section 5014.1
21 and who grants a franchise.

22 SEC. 6. Section 426 of the Vehicle Code is amended to read:

23 426. “New motor vehicle dealer” is a dealer, as defined in
24 Section 285, who, in addition to the requirements of that section,
25 either acquires for resale new and unregistered motor vehicles
26 from manufacturers or distributors of those motor vehicles or
27 acquires for resale new off-highway motorcycles, new all-terrain
28 vehicles, or new recreational off-highway vehicles from
29 manufacturers or distributors of the vehicles. A distinction shall
30 not be made, nor any different construction be given to the
31 definition of “new motor vehicle dealer” and “dealer” except for
32 the application of the provisions of Chapter 6 (commencing with
33 Section 3000) of Division 2 and Section 11704.5. Sections 3001
34 and 3003 do not, however, apply to a dealer who deals exclusively
35 in motorcycles, all-terrain vehicles, recreational off-highway
36 vehicles, or recreational vehicles, as defined in subdivision (a) of
37 Section 18010 of the Health and Safety Code.

38 SEC. 7. Section 672 of the Vehicle Code is amended to read:

39 672. (a) “Vehicle manufacturer” is any person who produces
40 from raw materials or new basic components a vehicle of a type

1 subject to registration under this code, off-highway motorcycles,
2 all-terrain vehicles, or recreational off-highway vehicles, subject
3 to identification under this code, or trailers subject to identification
4 pursuant to Section 5014.1, or who permanently alters, for purposes
5 of retail sales, new commercial vehicles by converting the vehicles
6 into house cars that display the insignia of approval required by
7 Section 18056 of the Health and Safety Code and any regulations
8 issued pursuant thereto by the Department of Housing and
9 Community Development. As used in this section, “permanently
10 alters” does not include the permanent attachment of a camper to
11 a vehicle.

12 (b) A vehicle manufacturer that produces a vehicle of a type
13 subject to registration that consists of used or reconditioned parts,
14 for the purposes of the code, is a remanufacturer, as defined in
15 Section 507.8.

16 (c) Unless a vehicle manufacturer either grants franchises to
17 franchisees in this state, or issues vehicle warranties directly to
18 franchisees in this state or consumers in this state, the manufacturer
19 shall have an established place of business or a representative in
20 this state.

21 (d) The scope and application of this section are limited to
22 Division 2 (commencing with Section 1500) and Division 5
23 (commencing with Section 11100).

24 SEC. 8. Section 3051 of the Vehicle Code is amended to read:

25 3051. This chapter does not apply to any person licensed as a
26 transporter under Article 1 (commencing with Section 11700) or
27 as a salesperson under Article 2 (commencing with Section 11800)
28 of Chapter 4 of Division 5, or to any licensee who is not a new
29 motor vehicle dealer, motor vehicle manufacturer, manufacturer
30 branch, new motor vehicle distributor, distributor branch, or
31 representative. This chapter does not apply to transactions
32 involving “mobilehomes,” as defined in Section 18008 of the
33 Health and Safety Code, “recreational vehicles,” as defined in
34 subdivision (b) of Section 18010 of the Health and Safety Code,
35 truck campers, “commercial coaches,” as defined in Section
36 18001.8 of the Health and Safety Code, or off-highway motor
37 vehicles subject to identification, as defined in Section 38012,
38 except off-highway motorcycles, as defined in Section 436,
39 all-terrain vehicles, as defined in Section 111, and recreational
40 off-highway vehicles, as defined in Section 500. Except as

1 otherwise provided in this chapter, this chapter applies to a new
2 motor vehicle dealer, a dealer of new recreational vehicles, as
3 defined in subdivision (a) of Section 18010 of the Health and
4 Safety Code, except a dealer who deals exclusively in truck
5 campers, a vehicle manufacturer as defined in Section 672, a
6 manufacturer branch as defined in Section 389, a distributor as
7 defined in Section 296, a distributor branch as defined in Section
8 297, a representative as defined in Section 512, or an applicant
9 therefor.

10 SEC. 9. Section 11701 of the Vehicle Code is amended to read:

11 11701. Every manufacturer, manufacturer branch,
12 remanufacturer, remanufacturer branch, distributor, distributor
13 branch, transporter, or dealer of vehicles of a type subject to
14 registration, or snowmobiles, motorcycles, all-terrain vehicles,
15 recreational off-highway vehicles, or trailers of a type subject to
16 identification, shall make application to the department for a license
17 containing a general distinguishing number. The applicant shall
18 submit proof of his or her status as a bona fide manufacturer,
19 manufacturer branch, remanufacturer, remanufacturer branch,
20 distributor, distributor branch, transporter, or dealer as may
21 reasonably be required by the department.

22 SEC. 10. Section 11704.5 of the Vehicle Code is amended to
23 read:

24 11704.5. (a) Except as provided in subdivision (e), every
25 person who applies for a dealer's license pursuant to Section 11701
26 for the purpose of transacting sales of used vehicles on a retail or
27 wholesale basis only shall be required to take and successfully
28 complete a written examination prepared and administered by the
29 department before a license may be issued. The examination shall
30 include, but need not be limited to, all of the following laws and
31 subjects:

32 (1) Division 12 (commencing with Section 24000), relating to
33 equipment of vehicles.

34 (2) Advertising.

35 (3) Odometers.

36 (4) Vehicle licensing and registration.

37 (5) Branch locations.

38 (6) Offsite sales.

39 (7) Unlawful dealer activities.

40 (8) Handling, completion, and disposition of departmental forms.

(b) Prior to the first taking of an examination under subdivision (a), every applicant shall successfully complete a preliminary educational program of not less than four hours. The program shall address, but not be limited to, all of the following topics:

(1) Chapter 2B (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to motor vehicle sales finance.

(2) Motor vehicle financing.

(3) Truth in lending.

(4) Sales and use taxes.

(5) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(6) Advertising.

(7) Odometers.

(8) Vehicle licensing and registration.

(9) Branch locations.

(10) Offsite sales.

(11) Unlawful dealer activities.

(12) Air pollution control requirements.

(13) Regulations of the Bureau of Automotive Repair.

(14) Handling, completion, and disposition of departmental forms.

(c) (1) Except as provided in paragraph (2) or (3), every dealer who is required to complete a written examination and an educational program pursuant to subdivisions (a) and (b) and who is thereafter issued a dealer's license shall successfully complete, every two years after issuance of that license, an educational program of not less than four hours that offers instruction in the subjects listed under subdivision (a) and the topics listed under subdivision (b), in order to maintain or renew that license.

(2) A dealer is not required to complete the educational program set forth in paragraph (1) if the educational program is completed by a managerial employee employed by the dealer.

(3) Paragraph (1) does not apply to dealers who sell vehicles on a wholesale basis only and who, in a one-year period, deal with less than 50 vehicles that are subject to registration.

(d) Instruction described in subdivisions (b) and (c) may be provided by generally accredited educational institutions, private vocational schools, and educational programs and seminars offered by professional societies, organizations, trade associations, and

1 other educational and technical programs that meet the
2 requirements of this section or by the department.

3 (e) This section does not apply to any of the following:

4 (1) An applicant for a new vehicle dealer's license or any
5 employee of that dealer.

6 (2) A person who holds a valid license as an automobile
7 dismantler, an employee of that dismantler, or an applicant for an
8 automobile dismantler's license.

9 (3) An applicant for a motorcycle only dealer's license or any
10 employee of that dealer.

11 (4) An applicant for a trailer only dealer's license or any
12 employee of that dealer.

13 (5) An applicant for an all-terrain only dealer's license or any
14 employee of that dealer.

15 (6) An applicant for a recreational off-highway vehicle only
16 dealer's license or any employee of that dealer.

17 SEC. 11. Section 11710 of the Vehicle Code is amended to
18 read:

19 11710. (a) Before any dealer's or remanufacturer's license is
20 issued or renewed by the department to any applicant therefor, the
21 applicant shall procure and file with the department a bond
22 executed by an admitted surety insurer, approved as to form by
23 the Attorney General, and conditioned that the applicant shall not
24 practice any fraud or make any fraudulent representation which
25 will cause a monetary loss to a purchaser, seller, financing agency,
26 or governmental agency.

27 (b) A dealer's bond shall be in the amount of fifty thousand
28 dollars (\$50,000), except the bond of a dealer who deals exclusively
29 in motorcycles ~~or~~, all-terrain vehicles, *or recreational off-highway*
30 *vehicles* shall be in the amount of ten thousand dollars (\$10,000).
31 Before the license is renewed by the department, the dealer, other
32 than a dealer who deals exclusively in motorcycles, all-terrain
33 vehicles, or recreational off-highway vehicles, shall procure and
34 file a bond in the amount of fifty thousand dollars (\$50,000). A
35 remanufacturer bond shall be in the amount of fifty thousand
36 dollars (\$50,000).

37 (c) Liability under the bond is to remain at full value. If the
38 amount of liability under the bond is decreased or there is
39 outstanding a final court judgment for which the dealer or
40 remanufacturer and sureties are liable, the dealer's or

1 remanufacturer's license shall be automatically suspended. In order
2 to reinstate the license and special plates, the licensee shall either
3 file an additional bond or restore the bond on file to the original
4 amount, or shall terminate the outstanding judgment for which the
5 dealer or remanufacturer and sureties are liable.

6 (d) A dealer's or remanufacturer's license, or renewal of the
7 license, shall not be issued to any applicant therefor, unless and
8 until the applicant files with the department a good and sufficient
9 instrument, in writing, in which the applicant appoints the director
10 as the true and lawful agent of the applicant upon whom all process
11 may be served in any action, or actions, which may thereafter be
12 commenced against the applicant, arising out of any claim for
13 damages suffered by any firm, person, association, or corporation,
14 by reason of the violation of the applicant of any of the terms and
15 provisions of this code or any condition of the dealer's or
16 remanufacturer's bond. The applicant shall stipulate and agree in
17 the appointment that any process directed to the applicant, when
18 personal service of process upon the applicant cannot be made in
19 this state after due diligence and, in that case, is served upon the
20 director or, in the event of the director's absence from the office,
21 upon any employee in charge of the office of the director, shall be
22 of the same legal force and effect as if served upon the applicant
23 personally. The applicant shall further stipulate and agree, in
24 writing, that the agency created by the appointment shall continue
25 for and during the period covered by any license that may be issued
26 and so long thereafter as the applicant may be made to answer in
27 damages for a violation of this code or any condition of the bond.
28 The instrument appointing the director as the agent for the applicant
29 for service of process shall be acknowledged by the applicant
30 before a notary public. In any case where the licensee is served
31 with process by service upon the director, one copy of the summons
32 and complaint shall be left with the director or in the director's
33 office in Sacramento or mailed to the office of the director in
34 Sacramento. A fee of five dollars (\$5) shall also be paid to the
35 director at the time of service of the copy of the summons and
36 complaint. Service on the director shall be a sufficient service on
37 the licensee if a notice of service and a copy of the summons and
38 complaint are immediately sent by registered mail by the plaintiff
39 or the plaintiff's attorney to the licensee. A copy of the summons
40 and complaint shall also be mailed by the plaintiff or the plaintiff's

1 attorney to the surety on the applicant's bond at the address of the
2 surety given in the bond, postpaid and registered with request for
3 return receipt. The director shall keep a record of all process so
4 served upon the director, which record shall show the day and hour
5 of service and shall retain the summons and complaint so served
6 on file. Where the licensee is served with process by service upon
7 the director, the licensee shall have and be allowed 30 days from
8 and after the service within which to answer any complaint or other
9 pleading which may be filed in the cause. However, for purposes
10 of venue, where the licensee is served with process by service upon
11 the director, the service is deemed to have been made upon the
12 licensee in the county in which the licensee has or last had an
13 established place of business.

14 SEC. 12. Section 11723 of the Vehicle Code is amended to
15 read:

16 11723. The board may require that fees shall be paid to the
17 department for the issuance or renewal of a license to do business
18 as a new motor vehicle dealer, dealer branch, manufacturer,
19 manufacturer branch, distributor, distributor branch, or
20 representative. The fees shall be to reimburse the department for
21 costs incurred in licensing those dealers, manufacturers,
22 distributors, branches, and representatives and for related
23 administrative costs incurred on behalf of the board. The board
24 may also require that an additional fee be paid to the department
25 when the licensee has failed to pay the fee authorized by Section
26 3016 prior to the expiration of its occupational license and special
27 plates and the licensee utilizes the 30-day late renewal period
28 authorized by subdivision (c) of Section 11717.

29 This section shall not apply to dealers, manufacturers,
30 distributors, or representatives of vehicles not subject to registration
31 under this code, except dealers, manufacturers, manufacturer
32 branches, distributors, distributor branches, or representatives of,
33 off-highway motorcycles, as defined in Section 436, all-terrain
34 vehicles, as defined in Section 111, recreational off-highway
35 vehicles, as defined in Section 500, and trailers subject to
36 identification pursuant to Section 5014.1.

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